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9 Attorneys for the United States of America

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,) Case No. 4:18-cv-04788-PJH
14)
15 Plaintiff,)
16 v.) AMENDED COMPLAINT
17)
18 WALTER JAMES KUBON, AKA WALTER)
19 JAMES KUBON JR., VALLY KUBON,)
20 STATE OF CALIFORNIA FRANCHISE TAX)
BOARD,)
21 Defendants.)
22)

23 Now comes the United States of America, by and through its undersigned counsel, and amends
24 its complaint to identify defendant Walter James Kubon as defendant Walter James Kubon, aka Walter
James Kubon Jr.

25 JURISDICTION AND VENUE

26 1. This is a civil action brought by the United States to reduce to judgment outstanding
27 federal tax assessments against defendants, Walter James Kubon, aka Walter James Kubon Jr., and
28 Vally Kubon, for tax years 2002, 2003 and 2004, and to foreclose federal tax liens securing those tax

1 assessments upon real property located at 560 Hobie Lane, San Jose, California 95127 (hereinafter “the
2 subject property”).

3 2. This action is commenced pursuant to 26 U.S.C. §§ 7401, 7402 and 7403(a) at the
4 direction of the Attorney General of the United States, with the authorization and sanction and at the
5 request of the Division Counsel of the Internal Revenue Service, a delegate of the Secretary of the
6 Treasury.

7 3. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1340 and 1345,
8 and under 26 U.S.C. §§ 7402(a) and 7403.

9 4. Pursuant to 28 U.S.C. §§ 1391 and 1396, venue is proper in the Northern District of
10 California because the defendants/taxpayers, Walter James Kubon, aka Walter James Kubon Jr., and
11 Vally Kubon, reside in this judicial district, the tax liabilities arose within this judicial district, and the
12 real property is situated within this judicial district.

13 IDENTIFICATION OF DEFENDANTS

14 5. Defendant Walter James Kubon, aka Walter James Kubon Jr., currently resides at 560
15 Hobie Lane, San Jose, California 95127.

16 6. Defendant Vally Kubon currently resides at 560 Hobie Lane, San Jose, California 95127.

17 7. Defendant State of California Franchise Tax Board is made a party pursuant to 26 U.S.C.
18 § 7403(b) in that it may claim an interest in the real property described in paragraph 12.

19 IDENTIFICATION OF PROPERTY SOUGHT TO BE FORECLOSED

20 8. The real property which is the subject of this suit is located at 560 Hobie Lane, San Jose,
21 California 95127, and is described in the office of the County Recorder of Santa Clara County,
22 California, as follows:

23 LOT 13, AS SHOWN ON THAT CERTAIN MAP ENTITLED, “TRACT NO. 5325 PRINCESS
24 HIGHLANDS UNITED NO. 3” WHICH MAP WAS FILED FOR RECORD IN THE OFFICE
25 OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA,
ON JUNE 4, 1973 IN BOOK 324 OF MAPS, AT PAGES 17 AND 18.

26 EXCEPTING THEREFROM THE UNDERGROUND WATER RIGHTS, WITH NO RIGHT
27 OF SURFACE ENTRY AS GRANTED BY LEWIS T. TOUCHSTONE TO SAN JOSE
28 WATER WORKS, A CALIFORNIA CORPORATION BY INSTRUMENT DATED JULY 9,
1973, RECORDED JULY 11, 1973, IN BOOK 0464, PAGE 195, SERIES NO. 4559297,
OFFICIAL RECORDS, SANTA CLARA COUNTY, CALIFORNIA.

560 HOBIE LN.
SAN JOSE, CA 95127

COUNT ONE

REDUCE ASSESSMENTS TO JUDGMENT

9. The United States realleges the allegations in paragraphs 1 through 8 above, as if fully set forth herein.

10. A delegate of the Secretary of the Treasury made separate assessments against defendants James Kubon, aka Walter James Kubon Jr., and Vally Kubon, individually, for their 2002 federal income tax liability (Form 1040), along with penalties and interest, and against them jointly for their joint 2003 and 2004 Form 1040 liability, along with penalties, and interest, as set forth below:

KIND OF TAX	TAX PERIOD	ASSESSMENT DATES	AMOUNT OF TAX ASSESSMENTS	UNPAID BALANCE OF TAXES PENALTIES AND INTEREST AS OF December 1, 2017
1040 – James Kubon, aka Walter James Kubon Jr.	2002	08/18/2008	\$140,478 – tax \$31,607.55 - penalty \$4,694.38 – penalty \$35,119.50 – penalty \$67,801.96 – interest	\$ 390,110.99
1040-Valley Kubon	2002	08/18/2008	\$135,525 – tax \$30,493.13 - penalty \$4,528.85 – penalty \$33,881.25– penalty \$65,411.41– interest	\$ 367,668.60
1040	2003	08/10/2007	\$41,519.17– tax \$8,303.83 – penalty \$5,652.36 – interest \$10,379.80– penalty \$20,767.79– interest \$2,682.41 – interest	\$ 96,910.60
1040	2004	06/09/2008	\$32,196 – tax \$1,609.80 - penalty \$6,439.20 – penalty \$10,364.73- interest \$11,377.76–interest \$8,049.00 – penalty \$2,127.46 – interest \$2,234.86 – interest	\$ 80,586.28

11. Despite timely notice and demand for payment of the taxes, penalties, and interest described in paragraph 10 above, defendants, Walter James Kubon, aka Walter James Kubon Jr., and Vally Kubon, have neglected, failed, or refused to pay the taxes, penalties and interest described in paragraph 10 above, and there remains due and owing on said assessments, as of December 1, 2017, the following sums:

(a) the sum of \$390,110.99 due against Walter James Kubon, aka Walter James Kubon Jr., individually, plus accrued interest and penalties and other statutory additions as provided by law, minus any credits, for his 2002 Form 1040 liability;

(b) the sum of \$367,668.60 due against Vally Kubon, individually, plus accrued interest and penalties and other statutory additions as provided by law, minus any credits, for her 2002 Form 1040 liability, plus accrued interest and penalties and other statutory additions as provided by law, minus any credits; and

(c) the sum of \$177,496.88 due against Walter James Kubon, aka Walter James Kubon Jr., and Vally Kubon jointly, plus accrued interest and penalties and other statutory additions as provided by law, minus any credits, for their 2003 and 2004 joint Form 1040 liability.

COUNT TWO

FORECLOSE FEDERAL TAX LIENS

12. The United States re-alleges the allegations in paragraphs 1 through 11 above, as if fully set forth herein.

13. Pursuant to 26 U.S.C. §§ 6321 and 6322, liens arose in favor of the Plaintiff, United States of America, upon all property and rights to property, whether real or personal, belonging to defendants, Walter James Kubon, aka Walter James Kubon Jr., and Vally Kubon, as of the dates of the assessments described in paragraph 10 above, and to all property acquired thereafter.

14. On September 17, 2008, a delegate of the Secretary of the Treasury filed a Notice of Federal Tax Lien against defendant, Walter James Kubon, aka Walter James Kubon Jr., with the County Recorder of Santa Clara County, California, with, respect to his unpaid 2002 Form 1040 federal income tax liability.

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1 15. On July 29, 2009, a delegate of the Secretary of the Treasury filed a Notice of Federal
2 Tax Lien against defendant Vally Kubon with the County Recorder of Santa Clara County, California,
3 with, respect to her unpaid 2002 Form 1040 federal income tax liability.

4 16. On October 3, 2007, a delegate of the Secretary of the Treasury filed a Notice of Federal
5 Tax Lien against defendants Walter James Kubon, aka Walter James Kubon Jr., and Vally Kubon with
6 the County Recorder of Santa Clara County, California, with, respect to their unpaid joint Form 1040
7 liability for 2003. That Notice of Federal Tax Lien was re-filed on January 20, 2017.

8 17. On October 3, 2008, a delegate of the Secretary of the Treasury filed a Notice of Federal
9 Tax Lien against defendants Walter James Kubon, aka Walter James Kubon Jr., and Vally Kubon with
10 the County Recorder of Shasta County, California, with, respect to their unpaid joint Form 1040 liability
11 for 2003. That Notice of Federal Tax Lien was re-filed on February 10, 2017.

12 18. On July 29, 2009, a delegate of the Secretary of the Treasury filed a Notice of Federal
13 Tax Lien against defendants Walter James Kubon, aka Walter James Kubon Jr., and Vally Kubon with
14 the County Recorder of Santa Clara County, California, with, respect to their unpaid joint Form 1040
15 liability for 2004.

16 19. The subject property has, at all pertinent times, been property belonging to defendants
17 Walter James Kubon, aka Walter James Kubon Jr., and Vally Kubon for purposes of the tax lien
18 provisions of the Internal Revenue Code. Accordingly, the federal tax liens at issue attached to the
19 subject property, and all property whether real or personal belonging to Walter James Kubon, aka
20 Walter James Kubon Jr., and Vally Kubon when the liens arose, and these tax liens have continued to
21 the present, without interruption, to attach to such property.

22 WHEREFORE, upon its allegations, Plaintiff, United States of America, prays that:

23 A. That this Court determine and adjudge that defendants Walter James Kubon, aka Walter
24 James Kubon Jr., and Vally Kubon are personally liable to the United States of America for the sum of
25 \$177,496.88, plus interest, and statutory additions, as provided by law, that have accrued, and continue
26 to accrue, from December 1, 2017, until fully paid; that a judgment in that amount, plus interest and
27 statutory additions, be entered against defendants Walter James Kubon, aka Walter James Kubon Jr.,
28 and Vally Kubon in favor of United States of America;

1 B. That this Court determine and adjudge that defendant Walter James Kubon, aka Walter
2 James Kubon Jr., is personally liable to the United States of America for the sum of \$390,110.99, plus
3 interest, and statutory additions, as provided by law, that have accrued, and continue to accrue, from
4 December 1, 2017, until fully paid; that a judgment in that amount, plus interest and statutory additions,
5 be entered against defendant Walter James Kubon, aka Walter James Kubon Jr., in favor of United
6 States of America;

7 C. That this Court determine and adjudge that defendant Vally Kubon is personally liable to
8 the United States of America for the sum of \$367,668.60, plus interest, and statutory additions, as
9 provided by law, that have accrued, and continue to accrue, from December 1, 2017, until fully paid;
10 that a judgment in that amount, plus interest and statutory additions, be entered against defendant Vally
11 Kubon in favor of United States of America;

12 D. The Court determine and adjudge that Plaintiff, United States of America, has liens for
13 the unpaid federal income taxes of defendants, Walter James Kubon aka Walter James Kubon Jr., and
14 Vally Kubon, which encumber and attach to the subject property described in paragraph 8;

15 E. That the tax liens and judgment lien of the United States of America be foreclosed and
16 that this Court order the sale of the subject property described in paragraph 8;

17 F. That the proceeds from the sale of the subject property be distributed according to the
18 lien priorities of the parties as determined by the Court;

19 G. That, Plaintiff, United States of America, be granted its costs of suit and attorneys' fees.

20 H. For such other and further relief as is just and proper.

21 Respectfully submitted,

22 ALEX G. TSE
23 United States Attorney

24 _____/s/_____
25 CYNTHIA STIER
26 Assistant United States Attorney
27 Tax Division
28

CERTIFICATE OF SERVICE

I, KATHY TAT declare:

That I am a citizen of the United States of America and employed in San Francisco County, California; that my business address is Office of United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, California 94102; that I am over the age of eighteen years, and am not a party to the above-entitled action.

I am employed by the United States Attorney for the Northern District of California and discretion to be competent to serve papers. The undersigned further certifies that I caused a copy of the following:

AMENDED COMPLAINT

to be served this date upon the party(ies) in this action by placing a true copy thereof in a sealed envelope, and served as follows:

 X FIRST CLASS MAIL by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

 PERSONAL SERVICE (BY MESSENGER/HAND DELIVERED)

 SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)

 FACSIMILE (FAX) No.:

to the parties addressed as follows:

Vally Kubon
560 Hobie Lane
San Jose, CA 95127

Walter James Kubon aka Walter James Kubon, Jr.
560 Hobie Lane
San Jose, CA 95127

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on 1/31/19 at San Francisco, California.

_____/S/_____
KATHY TAT
Legal Assistant